

**ASSEMBLY BILL**

**No. 261**

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**Introduced by Assembly Member Salas**

February 11, 2009

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An act to amend Sections 49076 and 49076.5 of the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 261, as introduced, Salas. Pupil records: privacy rights.

Existing law prohibits a school district from permitting access to pupil records to any person without written parental consent or judicial order, except as provided.

This bill would make various changes to those access to pupil record provisions to conform them to federal law.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 49076 of the Education Code is amended  
2     to read:  
3     49076. A school district is not authorized to permit access to  
4     pupil records to ~~any~~ a person without written parental consent or  
5     under judicial order except ~~that~~ *as set forth in this section and as*  
6     *permitted by Part 99 (commencing with Section 99.1) of Title 34*  
7     *of the Code of Federal Regulations:*  
8     (a) Access to those particular records relevant to the legitimate  
9     educational interests of the requester shall be permitted to the  
10    following:

(1) School officials and employees of the district, members of a school attendance review board ~~appointed~~ *established* pursuant to Section 48321, and ~~any~~ a volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing followup services to pupils referred to the school attendance review board, provided that the person has a legitimate educational interest to inspect a record.

(2) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided or where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 49068.

(3) Authorized representatives of the Comptroller General of the United States, the Secretary of Education, and ~~administrative head of an education agency~~, state education officials, or their respective designees, or the United States Office of Civil Rights, where the information is necessary to audit or evaluate a state or federally supported education program or pursuant to a federal or state law, provided that except when collection of personally identifiable information is specifically authorized by federal law, ~~any~~ data collected by those officials shall be protected in a manner ~~which~~ *that* will not permit the personal identification of pupils or their parents by other than those officials, and ~~any~~ personally identifiable data shall be destroyed when no longer needed for the audit, evaluation, and enforcement of federal legal requirements.

(4) ~~Other~~ *In accordance with Section 99.31 of Title 34 of the Code of Federal Regulations*, state and local officials *or authorities* to whom the ~~extent that~~ information is specifically ~~required~~ *is allowed to be reported or disclosed* pursuant to state law adopted prior to November 19, 1974, and state and local officials or authorities to whom the information is specifically allowed to be reported or disclosed pursuant to state law adopted after November 19, 1974.

(5) Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of the Internal Revenue Code of ~~1954~~ 1986.

(6) A pupil 16 years of age or older, ~~or having~~ *who has* completed the ~~10th~~ grade 10, and who requests access.

1     (7) ~~Any~~ A district ~~attorney who~~ attorney's office that is  
2 participating in or conducting a truancy mediation program  
3 pursuant to Section 48263.5, or Section 601.3 of the Welfare and  
4 Institutions Code, or participating in the presentation of evidence  
5 in a truancy petition pursuant to Section 681 of the Welfare and  
6 Institutions Code. *For purposes of this paragraph, a truancy*  
7 *mediation program under Section 48263.5 concerns the juvenile*  
8 *justice system and the system's ability to effectively serve, prior*  
9 *to adjudication, the pupil whose records are released, and the*  
10 *disclosure of those records is permitted pursuant to, and consistent*  
11 *with, Section 99.38 of Title 34 of the Code of Federal Regulations*  
12 *as that section exists on January 1, 2009.*

13     (8) A prosecuting agency for consideration against a parent or  
14 guardian for failure to comply with the Compulsory Education  
15 Law (Chapter 2 (commencing with Section 48200) ~~of Part 27~~) or  
16 with Compulsory Continuation Education (Chapter 3 (commencing  
17 with Section 48400) ~~of Part 27~~).

18     (9) ~~Any~~ A probation officer or district ~~attorney~~ attorney's office  
19 for the purposes of conducting ~~a criminal investigation or~~ an  
20 investigation ~~in regards to~~ *for juvenile adjudication*, declaring a  
21 person a ward of the court or involving a violation of a condition  
22 of probation, *where the records are relevant to the legitimate*  
23 *educational interests of the pupil, as these investigations concern*  
24 *the juvenile justice system and the system's ability to effectively*  
25 *serve, prior to adjudication, the pupil whose records are released,*  
26 *and disclosure of those records is permitted pursuant to, and*  
27 *consistent with, Section 99.38 of Title 34 of the Code of Federal*  
28 *Regulations as that section exists on January 1, 2009. Law*  
29 *enforcement records may be released without consent, a subpoena,*  
30 *or a court order.*

31     (10) ~~Any~~ A judge or probation officer for the purpose of  
32 conducting a truancy mediation program for a pupil, or for purposes  
33 of presenting evidence in a truancy petition pursuant to Section  
34 681 of the Welfare and Institutions Code. *For purposes of this*  
35 *paragraph, a truancy mediation program under Section 48263.5*  
36 *concerns the juvenile justice system and the system's ability to*  
37 *effectively serve, prior to adjudication, the pupil whose records*  
38 *are released, and the disclosure of those records is permitted*  
39 *pursuant to, and consistent with, Section 99.38 of Title 34 of the*  
40 *Code of Federal Regulations as that section exists on January 1,*

2009. The judge or probation officer shall certify in writing to the school district that the information will be used only for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant to this paragraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.

(11) ~~Any~~ A county placing agency for the purpose of fulfilling the requirements of the health and education summary required pursuant to Section 16010 of the Welfare and Institutions Code or for the purpose of fulfilling educational case management responsibilities required by the juvenile court or by law and to assist with the school transfer or enrollment of a pupil. School districts, county offices of education, and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of the pupil information by electronic mail, facsimile, electronic format, or other secure means.

(b) School districts may release information from pupil records to the following:

(1) Appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons.

(2) Agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid. However, information permitting the personal identification of a pupil or his or her parents may be disclosed only as may be necessary for purposes as to determine the eligibility of the pupil for financial aid, to determine the amount of the financial aid, to determine the conditions ~~which~~ *that* will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(3) The county elections official, for the purpose of identifying pupils eligible to register to vote, and for conducting programs to offer pupils an opportunity to register to vote *if the pupil's parents, or in the case of pupils 18 years of age or older, have not opted out of participation in this voter registration activity.* The information, however, shall not be used for any other purpose or given or transferred to any other person or agency.

(4) Accrediting associations in order to carry out their accrediting functions.

(5) Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing,

1 validating, or administering predictive tests, administering student  
2 aid programs, and improving instruction, if the studies are  
3 conducted in a manner that will not permit the personal  
4 identification of pupils or their parents by persons other than  
5 representatives of the organizations and the information will be  
6 destroyed when no longer needed for the purpose for which it is  
7 obtained.

8 (6) (A) (i) Officials and employees of private schools or school  
9 systems where the pupil is enrolled or intends to enroll, subject to  
10 the rights of parents as provided in Section 49068. This information  
11 shall be in addition to the pupil's permanent record transferred  
12 pursuant to Section 49068.

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14 (ii) A person, persons, agency, or organization permitted access  
15 to pupil records pursuant to this section ~~may~~ shall not permit access  
16 to any information obtained from those records by any other  
17 person, persons, agency, or organization without the written  
18 consent of the pupil's parent. ~~However,~~

19 (B) ~~However,~~ this paragraph does not require prior parental  
20 consent when information obtained pursuant to this section is  
21 shared with other persons within the educational institution, agency,  
22 or organization obtaining access, so long as those persons have a  
23 legitimate *educational* interest in the information *pursuant to*  
24 *Section 99.31 of Title 34 of the Code of Federal Regulations*.

25 (c) Notwithstanding any other ~~provision of law,~~ ~~any~~ a school  
26 district, including ~~any~~ a county office of education or  
27 superintendent of schools, may participate in an interagency data  
28 information system that permits access *by authorized school*  
29 *officials* to a computerized database ~~system within and between~~  
30 *maintained by a noneducational governmental agencies or districts*  
31 *as agency* to information or records ~~which~~ *that* are nonprivileged,  
32 and where release is authorized as to the requesting agency under  
33 state or federal law or regulation, if each of the following  
34 requirements ~~are~~ *is* met:

35 (1) Each agency and school district shall develop security  
36 procedures or devices by which unauthorized personnel cannot  
37 access data contained in the system.

38 (2) Each agency and school district shall develop procedures  
39 or devices to secure privileged or confidential data from  
40 unauthorized disclosure.

1 (3) Each school district shall comply with the access log  
2 requirements of Section 49064.

3 (4) The right of access granted shall not include the right to add,  
4 delete, or alter data without the written permission of the agency  
5 holding the data.

6 (5) An agency or school district ~~may~~ *shall* not make public or  
7 otherwise release information on an individual contained in the  
8 database where the information is protected from disclosure or  
9 release as to the requesting agency by state or federal law or  
10 regulation.

11 (6) *A school district, including a county office of education or*  
12 *superintendent of schools, shall not disclose information into this*  
13 *interagency data information system.*

14 SEC. 2. Section 49076.5 of the Education Code is amended to  
15 read:

16 49076.5. (a) Notwithstanding Section 49076, each school  
17 district shall release ~~any~~ *the* information it has specific to a  
18 particular pupil's identity and location that relates to the transfer  
19 of that pupil's records to another school district within this state  
20 or any other state or to a private school in this state to a designated  
21 peace officer, upon his or her request, when a proper police purpose  
22 exists for the use of that information. *As permitted by Part 99*  
23 *(commencing with Section 99.1) of Title 34 of the Code of Federal*  
24 *Regulations, the designated peace officer, or law enforcement*  
25 *agency, shall show the school district that the peace officer or law*  
26 *enforcement agency has obtained prior written consent from one*  
27 *parent, or provide information indicating that there is an*  
28 *emergency in which the information is necessary to protect the*  
29 *health or safety of the pupil, or that the peace officer or law*  
30 *enforcement agency has obtained a lawfully issued subpoena or*  
31 *a court order.*

32 (b) In order to protect the privacy interests of the pupil, a request  
33 to a school district for pupil record information pursuant to this  
34 section shall meet the following requirements:

35 (1) For ~~the~~ purposes of this section, "proper police purpose"  
36 means that probable cause exists that the pupil has been kidnapped  
37 and that his or her abductor may have enrolled the pupil in a school  
38 and that the agency has begun an active investigation.

39 (2) Only designated peace officers and federal criminal  
40 investigators and federal law enforcement officers, as defined in

1 Section 830.1 of the Penal Code, whose names have been submitted  
2 to the school district in writing by a law enforcement agency, may  
3 request and receive the information specified in subdivision (a).  
4 Each law enforcement agency shall ensure that each school district  
5 has at all times a current list of the names of designated peace  
6 officers authorized to request pupil record information.

7 (3) This section does not authorize designated peace officers to  
8 obtain any pupil record information other than that authorized by  
9 this section.

10 (4) The law enforcement agency requesting the information  
11 shall ensure that at no time shall ~~any~~ information obtained pursuant  
12 to this section be disclosed or used for ~~any~~ a purpose other than  
13 to assist in the investigation of suspected criminal conduct of  
14 kidnapping. A violation of this paragraph shall be punishable as  
15 a misdemeanor.

16 (5) The designated peace officer requesting information  
17 authorized for release by this section shall make a record on a form  
18 created and maintained by the law enforcement agency ~~which~~ that  
19 shall include the name of the pupil about whom the inquiry was  
20 made, the consent of a parent having legal custody of the pupil or  
21 a legal guardian, the name of the officer making the inquiry, the  
22 date of the inquiry, the name of the school district, the school  
23 district employee to whom the request was made, and the  
24 information that was requested.

25 (6) Whenever the designated peace officer requesting  
26 information authorized for release by this section does so in person,  
27 by telephone, or by some means other than in writing, the officer  
28 shall provide the school district with a letter confirming the request  
29 for pupil record information prior to any release of information.

30 (7) No school district, or ~~official~~ officer or employee ~~thereof~~ of  
31 *the school district*, shall be subject to criminal or civil liability for  
32 the release of pupil record information in good faith as authorized  
33 by this section.